

United States
Circuit Court of Appeals

For the Ninth Circuit. 7

WONG YING WING,

Appellant,

vs.

MARIE A. PROCTOR, United States Commissioner
of Immigration at the Port of Seattle,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Western District of Washington,
Northern Division.

FILED

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PAUL F. MARIEN

United States
Circuit Court of Appeals

For the Ninth Circuit.

WONG YING WING,

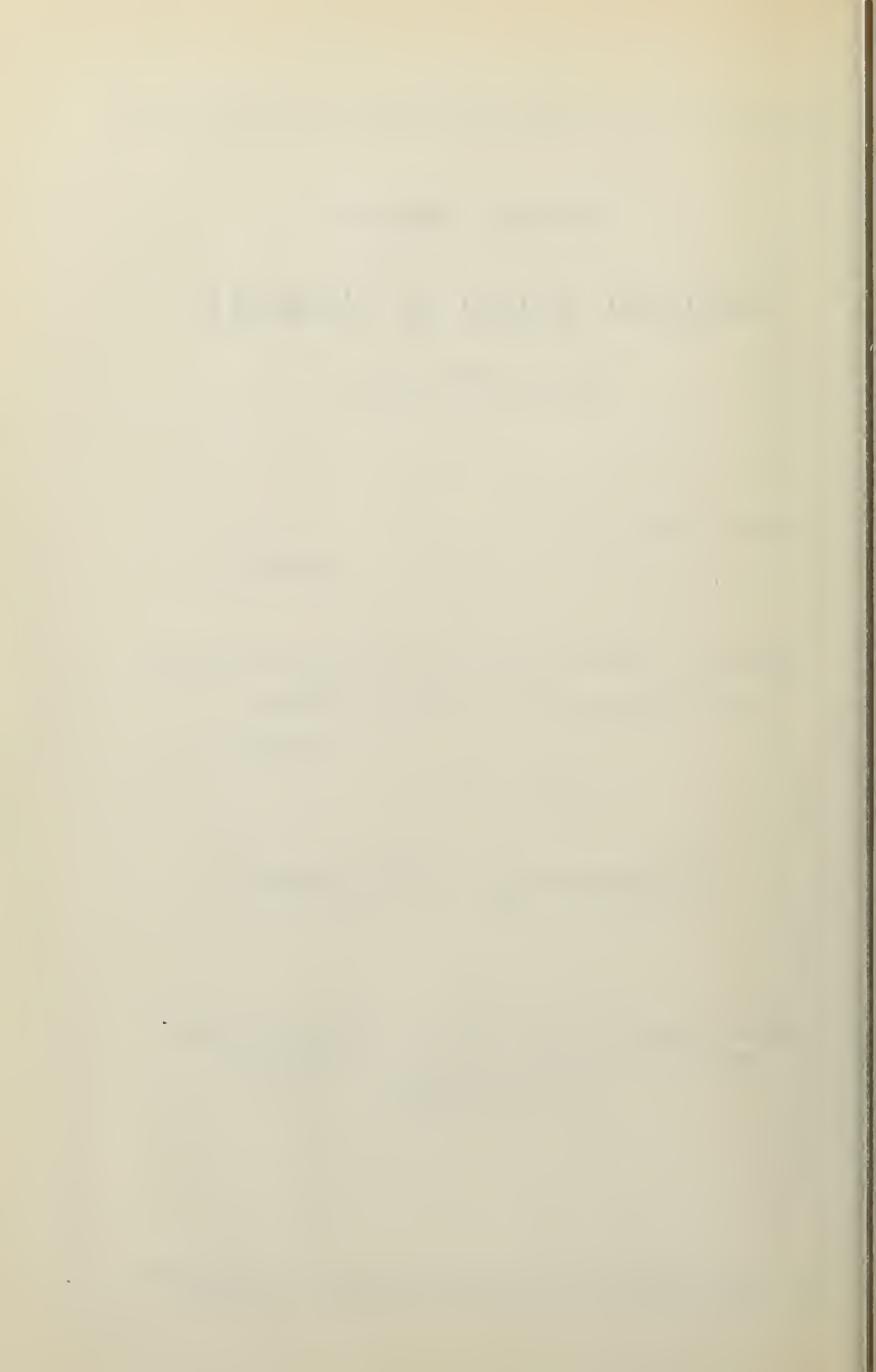
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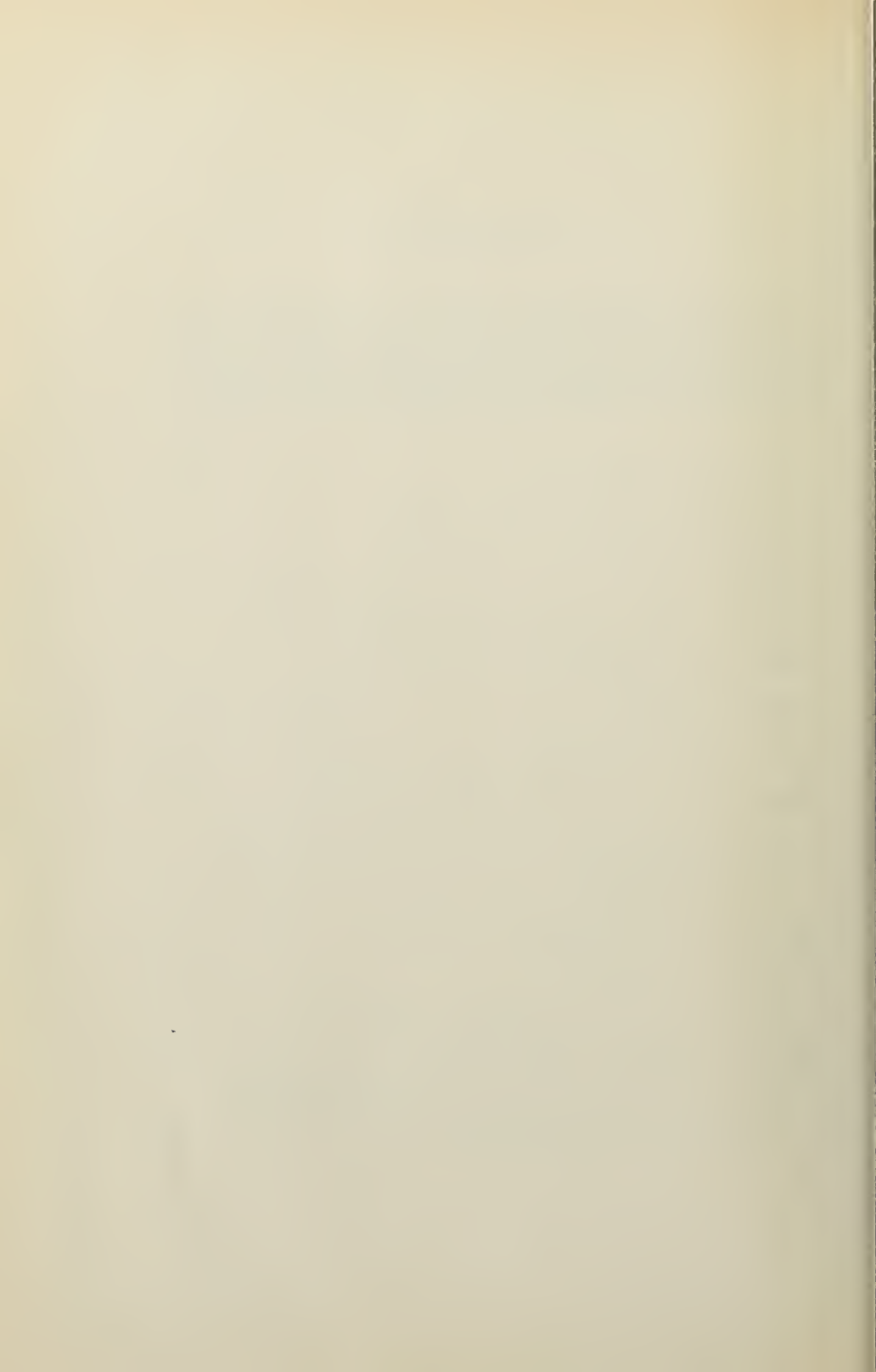
Upon Appeal from the District Court of the United
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

MR. EDWARD H. CHAVELLE,

Attorney for Appellant,

315 Lyon Building, Seattle, Washington.

MESSRS. J. CHARLES DENNIS and
JOHN AMBLER,

Attorneys for Appellee,

222 Post Office Building,
Seattle, Washington.

[1*]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 20894

In the Matter of the Application of
WONG YING WING

For a Writ of Habeas Corpus.

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable Judge of the above Court:

Comes now your petitioner and files this his peti-
tion for writ of habeas corpus, and respectfully
represents and shows:

I.

That your petitioner was born in the United
States, and is the son of Wong Hung Gee and Lim

*Page numbering appearing at the foot of page of original certified
Transcript of Record.

Shee; that he was born at No. 16 $\frac{1}{2}$ Waverly Place, San Francisco, California; that his blood brother, Wong Moon Fay, is a resident of Minneapolis, Minnesota, and has previously identified your petitioner in his various applications for determination of status and for permission to leave the United States and for reentry into the United States, as have the parents of petitioner; and that all of the evidence and testimony proves the status of your petitioner as a citizen.

II.

That, having been born in the United States, your petitioner did not leave the same until January, 1932, when he left for China, through the port of Seattle; that your petitioner was examined at Minneapolis, Minnesota, and subsequently arrived in Seattle from China May 29th, 1934, and then and there applied [2] to the Commissioner of Immigration and Naturalization at the Port of Seattle for admission as a citizen of the United States; and thereupon and thereafter, at a hearing on said application before said Commissioner and before a Board of Special Inquiry convened under the law by said Commissioner to pass upon said application and find and determine the truth thereunder, there was then and there presented to and taken by said Board testimony and evidence tending to show and showing the citizenship of your petitioner and his right to admission to the United States as said citizen.

III.

That, notwithstanding the facts as hereinabove set forth and the testimony presented to the Board of Special Inquiry, establishing the United States citizenship of your petitioner as aforesaid, and notwithstanding that said evidence and testimony before said Board stood and now stands uncontroverted by any material testimony, said Board and said Commissioner of Immigration and Naturalization did, on or about July 13th, 1934, refuse to admit your petitioner into the United States, and made its order that he be rejected and deported to the Republic of China, said order of rejection and deportation being made without any material evidence to support it and being based wholly and solely upon the ground and premises of alleged discrepancies between the testimony of your petitioner and the witnesses produced on his behalf, and on hearsay testimony only, and on theory and speculation—having no foundation or support in the record or the testimony in this proceeding and in the face of and contrary to the convincing evidence in the record of the citizenship of the father of your petitioner and of the relationship claimed by the said Wong Moon Fay for your petitioner. That the commission did not believe that your petitioner and Wong Moon Fay [3] could be blood brothers—this finding being based upon the conclusion that if Wong Ying Wing and Wong Moon Fay were blood brothers they would have kept in closer touch with each other than was indicated

by the record, and because Wong Ying Wing did not visit his said brother Wong Moon Fay in a number of years, from San Francisco to Minneapolis; and upon the further conjecture and conclusion that your petitioner went to Minneapolis from San Francisco to take the testimony of his brother in support of his application for permission to leave the United States, and on hearsay testimony only—this theory and speculation having no foundation or support in the record or the testimony in this proceeding, and being in the face of and contrary to the convincing evidence in the record of the citizenship of your petitioner and of the relationship claimed by your petitioner to his brother Wong Moon Fay and to his father and mother Wong Hung Gee and Lim Shee.

IV.

That thereupon and thereafter, on appeal from said order of rejection and deportation to the Honorable Secretary of Labor, said order was by her on or about the 12th day of August, 1934 affirmed and said appeal dismissed, all with the full knowledge on the part of said Commissioner and Board at the Port of Seattle and said Secretary of Labor of the proofs of citizenship and parentage so taken and filed in the proceeding as aforesaid—their action being so taken arbitrarily, capriciously, wrongfully and unfairly, against the interest and rights of your petitioner.

V.

That, notwithstanding the facts as above set forth, said Wong Ying Wing is now detained, imprisoned,

confined and restrained of his liberty by the Honorable Marie A. Proctor, [4] United States Commissioner of Immigration and Naturalization at the Port of Seattle, at and in the Immigration Station in the city of Seattle, county of King, State of Washington, in the district aforesaid, and within the jurisdiction of this court, said detention, imprisonment, confinement and restraint being for the pretended and supposed reason that, notwithstanding the facts as hereinbefore set forth, said Wong Ying Wing is not entitled to admission into the United States.

VI.

That the said detention, imprisonment, confinement and restraint of the said Wong Ying Wing is not upon or under any process issued by any final judgment of a court of competent jurisdiction, nor for contempt of any court officer or body having authority in the premises to commit, nor upon any warrant issued from this court, nor from any court upon any indictment or information.

VII.

That your petitioner has deposited with the Commissioner of Immigration and Naturalization at Seattle and the Department of Labor the sum of one hundred dollars (\$100.00) as maintenance charges and expenses of your petitioner pending this proceeding.

WHEREFORE, your petitioner prays that an order be issued herein, ordering and commanding

the said Honorable Marie A. Proctor, as Commissioner aforesaid to appear in this court on the 24th day of September, 1934 at 10:00 o'clock a. m., and show cause why a writ of habeas corpus should not issue herein; and that, upon said hearing, a writ of habeas corpus issue in due form as [5] provided by law; and that, pending further proceedings herein, said Commissioner of Immigration and Naturalization be enjoined and restrained from deporting your petitioner.

WONG YING WING,
Petitioner.

EDWARD H. CHAVELLE,
Attorney for Petitioner.

State of Washington,
County of King.—ss.

WONG YING WING, being first duly sworn, on oath deposes and says: That he is the above named petitioner; that he has heard the said petition read, knows the contents thereof and that the same is true and correct.

WONG YING WING

Subscribed and sworn to before me this 17th day of August, 1934.

[Seal] EDWARD H. CHAVELLE,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed Aug. 17, 1934. [6]

[Title of Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE.

To the Honorable John C. Bowen, Judge of the District Court of the United States for the Western District of Washington:

Comes now the respondent, MARIE A. PROCTOR, United States Commissioner of Immigration and Naturalization at the Port of Seattle, Washington, and, for answer and return to the order to show cause entered herein, certifies that the said WONG YING WING was detained by this respondent at the time he arrived at the port of Seattle, Washington, to wit: May 29, 1934, as an alien Chinese person not entitled to admission into the United States under the laws of the United States, pending a decision on his application for admission as a native-born citizen of this country; that, at a hearing before a Board of Special Inquiry at the Seattle Immigration Office, the said WONG YING WING was unable to furnish satisfactory proof that he was born in the United States and his application for admission into the United States was denied for that reason, and on the ground that he was coming to the United States in violation of Section 13 (c) of the Immigration Act of 1924 and that he was not in possession of an unexpired Immigration Visa as is required by the Immigration Act of 1924; that the said WONG YING WING appealed from this decision of the Board of Special Inquiry to the Secretary of Labor and thereafter the decision of the Board of Special Inquiry was affirmed by the Secre-

tary of Labor and the said WONG YING WING was ordered deported to China; that, since the final decision of the Secretary of Labor, respondent has held, and now holds and detains, the said WONG YING WING for deportation from the United States as an alien person not entitled to admission into the United States under the laws of the United States, and subject to deportation under the laws of the United States.

The original record of the Department of Labor, including all exhibits, both on the hearing before the Board of Special Inquiry at Seattle, Washington, and on the submission of the record on the appeal to the Secretary of Labor at Washington, D. C., in the matter of the [7] application of WONG YING WING for admission into the United States, is hereto attached and made a part and parcel of this return, as fully and completely as though set forth herein in detail.

WHEREFORE, respondent prays that the petition for a Writ of Habeas Corpus be denied.

MARIE A. PROCTOR

United States of America,
Western District of Washington,
Northern Division.—ss.

MARIE A. PROCTOR, being first duly sworn, on oath deposes and says: That she is United States Commissioner of Immigration and Naturalization at the port of Seattle, Washington, and the respondent named in the foregoing return; that she has

read the foregoing return, knows the contents thereof and believes the same to be true.

MARIE A. PROCTOR

Subscribed and sworn to before me this 19th day of September, 1934.

[Seal]

D. L. YOUNG,

Notary Public in and for the State of Washington,
residing at Seattle.

Received a copy of the within Return this 21 day of Sept. 1934.

EDWARD H. CHAVELLE.

Attorney for Petitioner.

[Endorsed]: Filed Sep. 21, 1934. [8]

[Title of Court and Cause.]

HEARING.

Now on this 15th day of October, 1934, Gerald Shucklin, Assistant United States District Attorney, appearing, this matter having been heard heretofore and taken under advisement, and the Court having examined the file and considered the arguments of counsel, now rules from the bench denying the application for a writ of habeas corpus. An order may be prepared.

Journal No. 22, Page 478. [9]

United States District Court, Western District of
Washington, Northern Division

No. 20894

In the Matter of the Application of
WONG YING WING

For a Writ of Habeas Corpus.

ORDER DENYING WRIT.

The Commissioner of Immigration having filed his Return to the Order to Show Cause entered herein, and the matter having been submitted to this Court on briefs on the 24th day of September, 1934, on stipulation by and between counsel for the respective parties, and the Court having heretofore rendered oral decision denying the petition, and being fully advised in the premises; NOW, THEREFORE, IT IS BY THIS COURT

ORDERED, ADJUDGED and DECREED that the Writ of Habeas Corpus as prayed for be, and the same is hereby denied; PROVIDED, however, that the petitioner may, within five (5) days, file notice of appeal, and, in the event that appeal be taken, and on condition that the petitioner shall deposit with the said Commissioner of Immigration such sum or sums as may be required for said petitioner's maintenance at the Seattle, Washington, Immigration Station during the pendency of said appeal, deportation shall be stayed pending the determination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit, or

by the United States Supreme Court should the cause be taken to that court on appeal.

Done in open court this 19th day of October, 1934.

JOHN C. BOWEN
United States District Judge.

O K.

J. CHARLES DENNIS
Attorney for Petitioner
EDWARD H. CHAVELLE.

[Endorsed]: Filed Oct. 19, 1934. [10]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To: Marie A. Proctor, United States Commissioner of Immigration at the Port of Seattle, and J. Charles Dennis, her Attorney:

You, and each of you, are hereby notified that the appellant above named, Wong Ying Wing, hereby and now appeals from that certain order, judgment and decree made herein by the above entitled court on the 19th day of October, 1934, adjudging, holding, finding and decreeing that the above named petitioner be denied a writ of habeas corpus, and from the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

EDWARD H. CHAVELLE
Attorney for Appellant.

Received a copy of the within Notice of Appeal this 19 day of October, 1934.

J. CHARLES DENNIS

Attorney for Appellee.

[Endorsed]: Filed Oct. 19, 1934. [11]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Wong Ying Wing, the appellant above named, deeming himself aggrieved by the order and judgment entered herein on the 19th day of October, 1934, does hereby appeal from the said order and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that a transcript of the record of the proceedings and papers, together with the immigration record in this case, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial District of the United States.

EDWARD H. CHAVELLE

Attorney for Appellant

Received a copy of the within petition this 19th day of Octo., 1934.

J. CHARLES DENNIS

Attorney for Appellee.

[Endorsed]: Filed Oct. 19, 1934. [12]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

The court erred in holding and deciding that a writ of habeas corpus should be denied to the petitioner herein, denying him admission to the United States as a citizen thereof.

EDWARD H. CHAVELLE

Attorney for Appellant

By HOWARD W. HEDGCOCK

Received a copy of the within Assignment of Errors this 19th day of October, 1934.

J. CHARLES DENNIS

Attorney for Appellee

[Endorsed]: Filed Oct. 19, 1934. [13]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

Now, on, to-wit, this 19th day of October, 1934, it is ordered that the appeal herein be allowed as prayed for; and it is further ordered that the Commissioner of Immigration at the Port of Seattle shall retain custody of said appellant pending appeal and the further orders of this Court and the orders of the United States Circuit Court of Appeals for the Ninth Circuit, the petitioner herein being required to pay his maintenance at the United States Immigration Station while so detained.

Done in open court this 19th day of October, 1934.

JOHN C. BOWEN

United States District Judge

Received a copy of the within Order this 19th day of Oct., 1934.

J. CHARLES DENNIS

Attorney for Appellee

[Endorsed]: Filed Oct. 19, 1934. [14]

[Title of Court and Cause.]

STIPULATION RE TRANSMISSION OF
ORIGINAL RECORD AND FILE OF DE-
PARTMENT OF LABOR.

IT IS HEREBY STIPULATED AND AGREED by and between EDWARD H. CHAVELLE, attorney for petitioner above named, and J. CHARLES DENNIS, attorney for respondent, Marie A. Proctor, United States Commissioner of Immigration, that the original file and record of the Department of Labor covering the proceedings against the petitioner above named may be by the Clerk of this court sent up to the Clerk of the Circuit Court of Appeals, as a part of the appellate record, in order that the said original immigration file may be considered by the Circuit Court of Appeals, in lieu of a certified copy of said record and file, and that said original records may be transmitted as a part of the appellate record.

EDWARD H. CHAVELLE

Attorney for Petitioner

J. CHARLES DENNIS

United States Attorney

JOHN AMBLER

Assistant United States Attorney

[Endorsed]: Filed Oct. 26, 1934. [15]

[Title of Court and Cause.]

ORDER FOR TRANSMISSION OF ORIGINAL
RECORD OF DEPARTMENT OF LABOR.

Upon stipulation of counsel, it is by the Court ORDERED, and the Court does hereby ORDER, that the Clerk of the above entitled court transmit with the appellate record in said cause the original file and record of the Department of Labor, covering the deportation proceedings against the petitioner directly to the Clerk of the Circuit Court of Appeals, in order that the said original immigration file may be considered by the Circuit Court of Appeals in lieu of a certified copy of said record.

Done this 26th day of October, 1934.

JOHN C. BOWEN

United States District Judge

Received a copy of the within Order this 26th day of October, 1934.

J. CHARLES DENNIS

Attorney for Appellee

Presented by

EDWARD H. CHAVELLE

By HOWARD W. HEDGCOCK

[Endorsed] Filed Oct. 26, 1934. [16]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT
OF RECORD.

To the Clerk of the Above Entitled Court:

You will please prepare and duly authenticate the transcript and following portions of the record in the above entitled case for appeal of the said appellant, heretofore allowed to the United States Circuit Court of Appeals for the Ninth Circuit.

1. Petition for writ of habeas corpus.

Return.

2. Decision.

3. Judgment.

4. Petition for appeal.

5. Notice of appeal.

6. Order allowing appeal.

7. Assignment of errors.

8. Citation.

9. Stipulation.

10. Order for transmission of original record.

11. This praecipe.

EDWARD H. CHAVELLE

Attorney for Appellant

Received a copy of the within Praecipe this 26th day of October, 1934.

J. CHARLES DENNIS

Attorney for Appellee

[Endorsed]: Filed Oct. 26, 1934. [17]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington.—ss.

I, Edgar M. Lakin, Clerk of the above entitled Court do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 17, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of the said District Court at Seattle, and that the same constitute the record on appeal herein from the Judgment of said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to wit: [18]

| | |
|---|---------|
| Clerk's fees (Act Feb. 11, 1925) for making record, certificate or return, 29 folios at 15¢ | \$ 5.35 |
| Appeal fee (Sec. 5 of Act) | 5.00 |
| Certificate of Clerk to Transcript of Record | .50 |
| Certificate of Clerk to Original Department of Labor Records | .50 |
| | <hr/> |
| Total, | \$11.35 |

I hereby certify that the above cost for preparing and certifying record, amounting to \$11.35 has been paid to me by the attorney for the appellant.

I further certify that I attach hereto and transmit herewith the original citation on appeal issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 7th day of November, 1934.

[Seal]

ED. M. LAKIN,

Clerk of the United States District Court for the
Western District of Washington,

By TRUMAN EGGER,

Deputy. [19]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America—ss.

To: Honorable Marie A. Proctor, United States
Commissioner of Immigration at the Port of
Seattle, GREETING:

WHEREAS, Wong Ying Wing has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment, order and decree lately, to-wit; on the 19th day of October, 1934, rendered in the District Court of the United States for the Western District of Washington, Northern Division, made in favor of you, adjudging and decreeing that the writ of habeas corpus as prayed for in the petition herein be denied.

You are therefore cited to appear before the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, State of California, within the time fixed by statute, to do and receive what may obtain to justice to be done in the premises.

Given under my hand in the City of Seattle, in the Ninth Circuit, this 19th day of October, 1934 and the Independence of the United States the one hundred and fifty-eighth.

JOHN C. BOWEN

United States District Judge.

Received a copy of the within Citation this 19th day of October, 1934.

J. CHARLES DENNIS

Attorney for Appellee

[Endorsed]: Filed Oct. 19, 1934. [20]

[Endorsed]: No. 7674. United States Circuit Court of Appeals for the Ninth Circuit. Wong Ying Wing, Appellant, vs. Marie A. Proctor, United States Commissioner of Immigration at the Port of Seattle, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed November 9, 1934.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.